

## §218.2

## 50 CFR Ch. II (10–1–09 Edition)

(b) The taking of marine mammals by the Navy is only authorized if it occurs within the VACAPES Range Complex Operation Area (OPAREA), which is located in the coastal and offshore waters of the western North Atlantic Ocean adjacent to Delaware, Maryland, Virginia, and North Carolina. The northernmost boundary of the VACAPES Range Complex OPAREA is located 37 nautical miles (nm) off the entrance to Delaware Bay at latitude 38°45' N, the farthest point of the eastern boundary is 184 nm east of Chesapeake Bay at longitude 72°41' W, and the southernmost point is 105 nm southeast of Cape Hatteras, North Carolina, at latitude of 34°19' N. The western boundary of the VACAPES Range Complex OPAREA lies 3 nm from the shoreline at the boundary separating state and Federal waters.

(c) The taking of marine mammals by the Navy is only authorized if it occurs incidental to the following activities within the designated amounts of use:

(1) The detonation of the underwater explosives indicated in paragraph (c)(1)(i) of this section conducted as part of the training events indicated in paragraph (c)(1)(ii) of this section:

(i) Underwater Explosives:

(A) AGM-114 (Hellfire missile)

(B) AGM-65 E/F (Maverick missile)

(C) MK-83/GBU-32 (1,000 lb High Explosive bomb)

(D) Airborne Mine Neutralization system (AMNS)

(E) 20 lb NEW charges

(F) AGM-88 (HARM)

(G) 5" Naval Gunfire

(ii) Training Events:

(A) Mine Exercise (MINEX) (Mine Neutralization [AMNS])—up to 150 exercises over the course of 5 years (an average of 30 per year);

(B) Mine Exercise (MINEX) (Mine Neutralization [20 lb NEW charges])—up to 120 exercises over the course of 5 years (an average of 24 per year);

(C) Bombing Exercise (BOMBEX) (Air-to-Surface)—up to 100 exercises over the course of 5 years (an average of 20 per year);

(D) Missile Exercise (MISSILEX) (Air-to-Surface; Hellfire missile)—up to 300 exercises over the course of 5 years (an average of 60 per year);

(E) Missile Exercise (MISSILEX) (Air-to-Surface; Maverick, HE)—up to 100 exercises over the course of 5 years (an average of 20 per year); and

(F) FIREX with IMPASS—up to 110 exercises over the course of 5 years (an average of 22 per year).

(2) [Reserved]

(d) Regulations are effective June 8, 2009 and are applicable to the Navy on June 5, 2009 through June 4, 2014.

### §218.2 Permissible methods of taking.

(a) Under Letters of Authorization issued pursuant to §216.106 of this chapter and §218.7, the Holder of the Letter of Authorization may incidentally, but not intentionally, take marine mammals within the area described in §218.1(b), provided the activity is in compliance with all terms, conditions, and requirements of this subpart and the appropriate Letter of Authorization.

(b) The activities identified in §218.1(c) must be conducted in a manner that minimizes, to the greatest extent practicable, any adverse impacts on marine mammals and their habitat.

(c) The incidental take of marine mammals under the activities identified in §218.1(c) is limited to the following species, by the indicated method of take and the indicated number of times:

(1) Level B Harassment:

(i) Mysticetes:

(A) Humpback whale (*Megaptera novaeangliae*)—10 (an average of 2 annually); and

(B) Fin whale (*Balaenoptera physalus*)—10 (an average of 2 annually).

(ii) Odontocetes:

(A) Sperm whale (*Physeter macrocephalus*)—10 (an average of 2 annually);

(B) Pygmy or dwarf sperm whales (*Kogia* sp.)—15 (an average of 3 annually);

(C) Rough-toothed dolphin (*Steno bredanensis*)—5 (an average of 1 annually);

(D) Bottlenose dolphin (*Tursiops truncatus*)—145 (an average of 29 annually);

(E) Pantropical spotted dolphin (*Stenella attenuata*)—350 (an average of 70 annually);

(F) Striped dolphin (*S. coeruleoalba*)—340 (an average of 68 annually);

(G) Clymene dolphin (*S. clymene*)—165 (an average of 33 annually);

(H) Atlantic spotted dolphin (*S. frontalis*)—215 (an average of 43 annually);

(I) Common dolphin (*Delphinus delphis*)—10,965 (an average of 2,193 annually);

(J) Risso's dolphin (*Grampus griseus*)—80 (an average of 16 annually); and

(K) Pilot whales (*Globicephala* sp.)—50 (an average of 10 annually).

(2) Level A Harassment (injury):

(i) Atlantic spotted dolphin—5 (an average of 1 annually);

(ii) Common dolphin—100 (an average of 20 annually);

(iii) Pantropical spotted dolphin—5 (an average of 1 annually); and

(iv) Striped dolphin—15 (an average of 3 annually).

### §218.3 Prohibitions.

Notwithstanding takings contemplated in §218.2 and authorized by a Letter of Authorization issued under §216.106 of this chapter and §218.7, no person in connection with the activities described in §218.1 may:

(a) Take any marine mammal not specified in §218.2(c);

(b) Take any marine mammal specified in §218.2(c) other than by incidental take as specified in §218.2(c)(1) and (2);

(c) Take a marine mammal specified in §218.2(c) if such taking results in more than a negligible impact on the species or stocks of such marine mammal; or

(d) Violate, or fail to comply with, the terms, conditions, and requirements of this Subpart or a Letter of Authorization issued under §216.106 of this chapter and §218.7.

### §218.4 Mitigation.

(a) When conducting training activities identified in §218.1(c), the mitigation measures contained in the Letter of Authorization issued under §216.106 of this chapter and §218.7 must be implemented. These mitigation measures include, but are not limited to:

(1) General Maritime Measures:

(i) Personnel Training—Lookouts

(A) All bridge personnel, Commanding Officers, Executive Officers, officers standing watch on the bridge, maritime patrol aircraft aircrews, and Mine Warfare (MIW) helicopter crews shall complete Marine Species Awareness Training (MSAT).

(B) Navy lookouts shall undertake extensive training to qualify as a watchstander in accordance with the Lookout Training Handbook (NAVEDTRA 12968-D).

(C) Lookout training shall include on-the-job instruction under the supervision of a qualified, experienced watchstander. Following successful completion of this supervised training period, lookouts shall complete the Personal Qualification Standard Program, certifying that they have demonstrated the necessary skills (such as detection and reporting of partially submerged objects).

(D) Lookouts shall be trained in the most effective means to ensure quick and effective communication within the command structure to facilitate implementation of protective measures if marine species are spotted.

(E) Surface lookouts shall scan the water from the ship to the horizon and be responsible for all contacts in their sector. In searching the assigned sector, the lookout shall always start at the forward part of the sector and search aft (toward the back). To search and scan, the lookout shall hold the binoculars steady so the horizon is in the top third of the field of vision and direct the eyes just below the horizon. The lookout shall scan for approximately five seconds in as many small steps as possible across the field seen through the binoculars. They shall search the entire sector in approximately five-degree steps, pausing between steps for approximately five seconds to scan the field of view. At the end of the sector search, the glasses shall be lowered to allow the eyes to rest for a few seconds, and then the lookout shall search back across the sector with the naked eye.

(F) At night, lookouts shall scan the horizon in a series of movements that would allow their eyes to come to periodic rests as they scan the sector. When visually searching at night, they shall look a little to one side and out of